(2017) 01 AP CK 0046

In the Andhra Pradesh High Court

Case No : AS MP No. 262 of 2015 in AS No. 1035 of 2000 and Cross Objections (SR) No. 81839 of 2001

Thota Muthyalu APPELLANT

Vs

Singareni Colleries Co. Ltd. RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Citation : (2017) 2 AndhLD 623

Hon'ble Judges : P.V. Sanjay Kumar and M.S.K. Jaiswal, JJ.

Bench : Division Bench

Advocate : M. Rama Mohan Reddy, Advocate, for the Petitioner ASMP No. 262 of 2015 and Cross Objectors in Cross Objections (SR) No. 81839 of 2001; J. Srinivasa Rao (SC for SCCL), for the Respondents in both the cases

Final Decision : Disposed Off

Judgement

P.V. Sanjay Kumar, J - By judgment dated 17.12.2013, a Division Bench of this Court comprising Hon''ble Sri Justice L. Narasimha Reddy and one of us, Hon''ble Sri Justice M.S.K. Jaiswal, dismissed AS No. 1035 of 2000 filed by the Singareni Collieries Company Limited (SCCL) and partly allowed the Cross-Objections filed by the respondents in the appeal (landowners). ASMP No. 262 of 2015 is filed by the landowners under Order 47 Rule 1 CPC seeking review of the afore stated judgment insofar as their cross-objections are concerned.

2. The matter that fell for consideration before this Court in the appeal was whether the reference Court of the learned Senior Civil Judge, Peddapalli, Karimnagar District, had exercised jurisdiction correctly in OP No. 50 of 1996 in fixing the compensation payable by the SCCL to the landowners. It appears that vast extents of land in Lingapur Village of Ramagundam Mandal were acquired under the Land Acquisition Act, 1894 (for brevity, ''the Act of 1894'') for the benefit of the SCCL. Insofar as the landowners were concerned, their lands to an extent of the Acs. 24.05 guntas were acquired under Notification dated 15.3.1995 issued under Section 4(1) of the Act of 1894. The Land Acquisition

Officer fixed the market value of these lands at Rs. 12,700/- per acre. Having received this amount under protest, the landowners sought a reference under Section 18 of the Act of 1894. The reference Court, vide the order dated 16.10.1999 passed in OP No. 50 of 1996, enhanced the compensation to Rs.3 8,000/- per acre, Aggrieved thereby, the SCCL preferred the present appeal and dissatisfied with enhancement, the landowners filed cross objections seeking further enhancement to Rs.60,000/- per acre.

3. At the time of final disposal, the Division Bench took note of the fact that about Acs. 970.00 guntas of land was acquired in Lingapur Village in the year 1989 for the SCCL, for which the Land Acquisition Officer had fixed the market value at Rs. 12,200/- per acre. Significantly, as noted by the Division Bench, this fact was relied upon by the Land Acquisition Officer while fixing the market value in the present case. The Division Bench also took note of the fact that the compensation fixed in relation to the larger extent of Acs. 970.00 guntas in the same village was enhanced by this Court to Rs.55,000/- per acre and, thereafter, by the Supreme Court to Rs.65,000/- per acre. As the full text of the judgment of the Supreme Court was not made available to the Division Bench in relation to the further enhancement to Rs.65,000/- per acre, the Division Bench observed that it found it difficult to order further enhancement over and above what was claimed in the cross-objections. Finding fault with the reference Court for not taking into account the appreciation of property values over a period of five years in relation to Ex. A2 sale deed dated 28.6.1988, the Division Bench enhanced the compensation payable to the landowners to Rs.60,000/- per acre. The appeal was disposed of accordingly.

4. Sri M. Rammohan Reddy, learned Counsel for the review petitioners/ landowners, would state that the judgment of the Supreme Court has now been placed on record and in the light of the observations made there in, to the effect that the High Court is bound to award just and fair compensation to the land owners irrespective of what they had claimed, the judgment in the appeal warrants review. Learned Counsel would place reliance on the following observations made by the Supreme Court in the order dated 2.8.2010.

''In our view, the Division Bench was duty bound to award just and fair compensation to the respondents who were deprived of their only source of livelihood and there was no justification to deny them their legitimate right to receive such compensation on the ground that they had restricted the claim to Rs.60,000/-. We can take judicial notice of the fact that in majority of cases small land holders whose land is acquired by the Government cannot, due to sheer poverty and ignorance, seek redressal of their grievance through the existing system of dispensation of justice. Therefore, as and when occasion arises, the Court is duty bound to award just and reasonable compensation to the land owners irrespective of the fact that due to their inability to pay Court-fee, they may have been compelled to restrict their claim to a particular limit.''

5. Sri J. Sreenivasa Rao, learned Standing Counsel for the SCCL, the respondent

herein, would however point out that reference was made to the Supreme Court judgment even at the time of passing of the judgment on 17.12.2013. Learned Standing Counsel would therefore assert that the petitioners/landowners cannot take undue advantage of the delay on their own part and seek further monetary relief.

6. It is no doubt true that the judgment of the Supreme Court must have been available at the time the Division Bench rendered the judgment in the appeal on 17.12.2013. However, the full text of the said judgment was not produced and, therefore, the Division Bench observed that 2017(2) FR-F-40 it found it difficult to order further enhancement over and above what was claimed in the cross-objections. In the light of the observations of the Supreme Court, extracted supra, it is clear that the claim made by the landowners cannot restrict their right to just compensation and it would be open to the Court concerned to award fair compensation, irrespective of the restricted claim of the land owners, be it due to inability to pay Court-fee or ignorance. The review petition is accordingly granted and the matter is taken up for rehearing.

7. Though Sri J. Sreenivasa Rao, learned Standing Counsel, would place reliance on Dokka Samuel v. Dr. Jacob Lazarus Chelly, (1997) 4 SCC 478 = 1997 (4) ALD (S.C.S.N.) 32-2, in support of his plea that a review petition would not be maintainable on the ground of omission to cite an authority of law, we are of the opinion that this judgment has no relevance presently, as the judgment of the Supreme Court now relied upon was referred to even at the time of disposal of the appeal, but the full text thereof was not made available. The learned Standing Counsel, however does not dispute the fact that the lands which were the subject-mater of the case before the Supreme Court were similar to the lands in the present case.

8. We therefore see no reason to discriminate between identically situated land owners, whose lands were acquired for the benefit of the SCCL. That being said, we also find merit in the submission of Sri J. Sreenivasa Rao, learned Standing Counsel, that the review petitioners / landowners cannot take advantage of the delay on their own part and seek the monetary benefits which they would otherwise be entitled to as a matter of right. There is no reason forthcoming from the landowners as to why the judgment of the Supreme Court, which was referred to by them even at the stage of disposal of the appeal, was not produced for all these years and why they did not seek review of the judgment till December, 2014. This delay is squarely attributable to them and they cannot be benefited by interest, at the cost of the exchequer, for this period of delay for which they are themselves responsible.

9. As pointed out in Dhiraj Singh (Dead) through Legal Respresentatives v. State of Haryana, (2014) 14 SCC 127/ equities in such a situation can be balanced by denying the landowners'' interest for the period for which they did not approach the Court but their substantive rights cannot be defeated by taking a hyper-technical view. The Supreme Court further observed that in the matter of

compensation for land acquisition, the approach of the Court has to be pragmatic and not pedantic.

10. This being the required legal methodology, we are of the opinion that the review petitioners/landowners cannot be denied the market value on par with that fixed by the Supreme Court for identically situated land owners. The market value is therefore enhanced from Rs.60,000/- to Rs.65,000/- per acre. However, keeping in mind the delay on the part of the review petitioners/landowners in approaching this Court for relief based upon the Supreme Court judgment rendered as long back as in the year 2010, they are held dis entitled to interest for this period. As this review petition was properly presented only in December, 2014, the review petitioners / landowners shall be paid interest on the enhanced amount only from January, 2015, till the date of actual realization. The review petition is accordingly ordered to the extent indicated above. The review petitioners shall pay the deficit Court-fee within three weeks from today to the credit of this appeal.